



CLOSED CASE SUMMARY

ISSUED DATE: MAY 2, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0505

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Training Referral
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Sustained
# 3	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Allegation Removed
# 4	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Allegation Removed

Imposed Discipline

Oral Reprimand

Named Employee #2

Allegation(s):		Director's Findings
# 1	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Training Referral
# 2	5.001 - Standards and Duties 6. Employees May Use Discretion	Sustained
# 3	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Allegation Removed
# 4	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report	Allegation Removed

Imposed Discipline

Oral Reprimand

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employees failed to conduct and document a comprehensive investigation into the welfare of an individual who was found dead the morning after the welfare check was requested.

ADMINISTRATIVE NOTE:

OPA submitted this case to the Office of Inspector General (OIG) for certification as timely, thorough, and objective. OIG certified this case as both thorough and objective but declined to certify the case as timely. OIG explained that



the reason for this declination was that “the five-day classification notice was not sent as outlined in the OPA Manual (Section 5.2.B.i).”

OPA is required by the Seattle Police Officers’ Guild (SPOG) Collective Bargaining Agreement (CBA) to “notify the named employee of the receipt of a complaint, including the basic details of the complaint, within five (5) business days after receipt of the complaint by OPA.” OPA’s requirement to comply with this timeline is also memorialized in the OPA Manual. OPA received this complaint as a Blue Team referral on November 7, 2021. Accordingly, OIG is correct that, under the terms of the SPOG CBA, the 5-day notice was late when it was sent on November 30, 2021.

OPA respectfully disagrees that this delay under a single term of the SPOG CBA renders the investigation itself untimely under the OIG’s statutory purview to “determine whether the investigation should be certified by the OIG as thorough, timely, and objective.” S.M.C. 3.29.260(A). As an initial matter, the 5-day notice, unlike the 30-day notice and the 180-day investigation timeline, is not a statutorily required timeline for an OPA Investigation. See S.M.C. 3.29.130. Additionally, while the statute requires OIG to consider “whether applicable OPA procedures were followed and the intake and investigation were conducted in accordance with the OPA Manual,” S.M.C. 3.29.260(F)(2)(e), OPA believes that the factor that “witnesses were contacted, interviewed, and all other material evidence was timely collected,” S.M.C. 3.29.260(F)(2)(a), should outweigh the delay on a single internal deadline required under the SPOG CBA. Moreover, OPA does not believe that the tardiness of this notice is an irregularity of such significance to warrant a partial certification. Finally, OPA believes that the statute’s wording directs OIG to review the timeliness of the investigation itself, not internal deadlines pursuant to the SPOG CBA.

This is an amended DCM. OPA originally recommended a sustained finding for Named Employee #1, Allegation #1 and Named Employee #2, Allegation #1. A discipline meeting was then held with the chain of command. A robust conversation was held concerning the facts and circumstances underlying this complaint. For the reasons set forth below, OPA agreed that the most appropriate resolution to Allegation #1 for both Named Employees would be a training referral.

SUMMARY OF INVESTIGATION:

On 10/24/21 at approximately 2245hrs, a welfare check was requested for a Community Member (CM#1), by his wife Community Member #2 (CM#2). CM#2 had tracked CM#1’s his cell phone to a parking lot located at 1228 Harbor AV SW. CM#2 provided a description of CM#1’s vehicle as a long bed silver pickup truck with no canopy and black rims. CM#2 also provided the vehicle’s Alaska license plate number and the make and model of the vehicle.

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were in a 2-person vehicle and were dispatched to the call. At approximately 2300hrs, In-Car Video (ICV) depicted them driving into the parking lot and drive by a vehicle fitting the description given. At 2346hrs the Named Employees cleared the call with a note that stated they had driven along the beach and were unable to locate the vehicle. The following day the vehicle and the occupant were found by CM#2’s father at the location. CM#1 was found deceased in the vehicle.

During its investigation, OPA reviewed the complaint, Computer Aided Dispatch (CAD) Call Report, Incident Report, ICV, and Body Worn Video (BWV). OPA also interviewed both Named Employees.



ICV footage showed the Named Employees' vehicle enter the parking lot where CM#1's cell phone was tracked. The Named Employees drove around the parking lot for approximately 6 minutes. The Named Employees happened upon a vehicle fitting the description of CM#1's vehicle.

ICV captured part of the conversation between NE#1 and NE#2 as they drove around the parking lot. NE#1 was driving, and NE#2 was the passenger. NE#2 started the ICV recording. NE#1 drove up to and past CM#1's vehicle. NE#1 and NE#2 discussed what other calls that were ongoing at the time. The patrol vehicle exited the parking lot and turned right onto Harbor Ave SW. The vehicle traveled down Harbor Ave SW. One of the Named Employees remarked that CM#1 should have been in the parking lot that they were just in. The other Named Employee responded but his words could not be made out. The patrol vehicle drove west along Harbor Ave SW.

A review of BWV for the following day depicted CM#1's vehicle parked in the same spot in the parking lot of 1228 Harbor WY SW from the previous night.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. (SPD Policy 15.180-POL-1.)

NE#1 was the designated driver. A truck that closely matched CM#1 truck was clearly visible on ICV. NE#1 and NE#2 cannot be heard to make any indication they saw the vehicle although they drove diagonally towards it.

Implicit in this policy is that officers must take the time necessary to search for relevant evidence. Although NE#1 happened upon a truck which matched the description of the vehicle given—in exactly the area that NE#1 and NE#2 were tasked to search—no additional search was completed. The CAD description of the truck was specific in that it was described as “a lifted long 14 bed, no canopy, Dodge pickup with tinted windows and 15” black rims.”

When interviewed, NE#1 described himself as a “car guy” and believed that the vehicle “was a Chevy and not a Dodge.” The difference between these two vehicles for a self-proclaimed car enthusiast is minimal. The specific details attached to this vehicle, namely “a lifted long 14 bed, no canopy, Dodge pickup with tinted windows and 15” black rims” should have required a more thorough search of the vehicle regardless of the similarities between the two models. NE#1 stated that the truck he observed did not have Alaskan license plates on it, and that the truck that they were searching for did have Alaskan license plates. However, although NE#1 was certain that the truck did not have Alaskan plates, he could not recall what license plate he saw on the vehicle. There was no discussion between NE#1 and NE#2 that the plates on the truck were not Alaskan. The truck that was at the same location the next morning had Alaskan license plates.

The evidence that NE#1 failed to conduct a thorough and complete search for evidence in this matter is substantial. Approximately 15 minutes elapsed from the time the call was received to the time that he drove by the vehicle. NE#1 took no steps to attempt to locate CM#1 in the vehicle, even though he had a description of the vehicle that largely matched that given by CM#2. Owing to the lack of search done by NE#1 of the vehicle, it is unknown whether or not CM#1 was actually in the vehicle at this time. While NE#1 may have genuinely believed that the vehicle he viewed was



a Chevy model and not a Dodge, it does not explain why he ignored the other, very descriptive elements, which did match. The search of this vehicle was simply the minimum investigatory requirements that NE#1 was expected to perform and his failure to do so was contrary to this policy.

For the above reasons, OPA originally recommended that this allegation be sustained. However, following discussion with the chain of command, OPA believes that the misconduct at issue here is most appropriately addressed as an unreasonable exercise of discretion. Ultimately, given the information available to the Named Employees at the time, the Named Employees' shortcoming had less to do with their physical investigation than their decision-making in not further investigating the vehicle that they located.

For these reasons, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss OPA's findings with NE#1, review SPD Policy 15.180-POL-1 with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-6, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[d]iscretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-6.)

The duties of the office are to investigate the complaint received. NE#1 failed to investigate the complaint without any reasonable discretionary explanation. The safety issue of concern was the welfare of CM#1. His known transport was described in detail. A vehicle matching that description is evident on the ICV, yet NE#1 did not appropriately exercise discretion to investigate the vehicle.

As such, OPA finds that NE#1's decision-making here was so deficient as to violate policy, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 10. Employees Will Strive to be Professional

SPD Policy 5.001-POL-10 requires that SPD employees "strive to be professional." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers" whether on or off duty. (SPD Policy 5.001-POL-10.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use



profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (Id.) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (Id.)

NE#1 met the requirements under Policy 5.001-POL-10. While the actions taken failed with respect to policies covering discretion and completing a thorough search for evidence, professionalism as defined was upheld.

Accordingly, OPA recommends that this allegation be Removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #4

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. Even where victims of crime refuse to cooperate and to give a statement, officers are still required to document that fact in a report. (SPD Policy 15.180-POL-5.)

NE#1 cleared the call with dispatch indicating that the officers were unable to locate anything on the call and added remarks to the call to that effect. Without excusing NE#1’s deficient search, OPA finds NE#1’s documentation to be procedurally correct given that—due to his deficient search—he did not locate anything requiring documentation.

Accordingly, OPA recommends that this allegation be Removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #1

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. (SPD Policy 15.180-POL-1.)

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA previously recommended that this allegation be Sustained. However, following discussion with the chain of command, OPA believes that the misconduct at issue here is most appropriately addressed as an unreasonable exercise of discretion. Ultimately, given the information available to the Named Employees at the time, the Named Employees’ shortcoming had less to do with their physical investigation than their decision-making in not further investigating the vehicle that they located.

For these reasons, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2’s chain of command should discuss OPA’s findings with NE#2, review SPD Policy 15.180-POL-1 with NE#2, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in Blue Team.



Recommended Finding: **Sustained**

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 6. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[d]iscretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

The duties of the office are to investigate the complaint received. Similar to NE#1, NE#2 failed to investigate the complaint without any reasonable discretionary explanation. The safety issue of concern was the welfare of CM#1. His known transport was described in detail. A vehicle matching that description is evident on the ICV, yet NE#2 did not appropriate exercise discretion to investigate the vehicle. NE#2 stated in his interview with OPA that during this call he conducted a more thorough area check than he normally does when performing an area check.

Similar to NE#1, NE#2 stated during interview that the plates on the truck observed in the parking lot were not Alaskan, but he had no recollection of what the plate was. There was no discussion between NE#1 and NE#2 that the plates on the truck were not Alaskan.

As such, OPA finds that NE#2’s decision-making here was so deficient as to violate policy, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 10. Employees Will Strive to be Professional

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #4

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a Report

For the same reasons as stated above (see Named Employee #1 – Allegation #4), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**